

Amend Sections 7285 and 7285.5 of the Revenue and Taxation Code, related to transactions and use taxes, to (1) clarify that an ordinance, not a resolution, is necessary for the adoption of the tax; (2) clarify that Section 7285 authorizes counties to levy a transactions and use tax for general purposes; (3) delete the necessity of forming an authority to levy a district tax for special purposes; (4) require two-thirds voter approval of a special-purpose tax; and (5) clarify that transactions and use taxes can be levied in multiples of 0.25%.

Source: Legal Division

Under current law, Revenue and Taxation Code Section 7285 provides that the board of supervisors of any county may levy a transactions and use tax at a rate of 0.25 percent or a multiple thereof, if the ordinance or resolution proposing that tax is approved by a two-thirds vote of all members of the board of supervisors and the tax is approved by a majority vote of the qualified voters of the county voting in an election on the issue. Conversely, Revenue and Taxation Code Sections 7261, 7262, and 7285.5 require adoption of an ordinance, and not a resolution.

Under current law, Revenue and Taxation Code Section 7285.5 provides that the board of supervisors of any county may establish an authority for specific purposes. That authority may impose a transactions and use tax at a rate of 0.25 or 0.5 percent, provided that the ordinance proposing that tax is approved by a two-thirds vote of the authority and is subsequently approved by a majority vote of the qualified voters.

When Section 7285 was enacted in 1987, several appellate court opinions indicated that if a district tax was levied by a special district and the revenues placed in the general fund of that district (rather than a special account) the tax was a general tax, not a special tax, and so did not require two-thirds voter approval. The Legislature believed that no voter approval was required at all, but did put in a provision to require voter approval due to the passage the previous year of Proposition 62^a. Hence, the Legislature put the special authority requirement into the statute in order to permit majority voter approval.

The decision in *Rider v. San Diego* (1991) 1 Cal.4th 1, clarified that a tax levied by a special-purpose agency is a special tax, requiring two-thirds voter approval. The language in Section 7285.5 regarding the special authority and majority voter approval is therefore contrary to law, and its continued presence in the statute has caused considerable confusion. Counties are unsure if the incorrect voter-approval requirement in Section 7285.5 invalidates the authority to levy a special tax. In

^a Proposition 62, passed by the voters on the November 4, 1986, established new requirements for the adoption of new or higher general and special taxes by local agencies. The measure specifically required that all proposals for new general taxes be approved by two-thirds of the local agency's governing body and by a majority of the voters.

addition, the rate in Section 7285.5 is pegged at 0.25% or 0.5%, instead of 0.25% or a multiple thereof, as in Section 7285. Except for the voter-approval requirements, the requirements of Sections 7285 and 7285.5 should be harmonized.

Section 7285 does not specifically state the purposes for which the tax may be authorized. Only by comparison to Section 7285.5, or by reference to the legislative history, is it apparent that the tax authority granted by that section is for general purposes. As a result, the precise nature of the taxing authority granted to counties by Section 7285 is not clear. This proposal would clarify that Section 7285 authorizes the counties to levy a transactions and use tax for general purposes.

This proposal would also remove the requirement that counties adopt a resolution to pass a general purpose tax, and therefore would only require passage of an ordinance. In addition, this proposal would allow counties to levy a special tax directly, without obtaining specific legislative authority, saving time and resources that now are spent on obtaining that authority.

Section 7285 of the Revenue and Taxation Code is amended to read:

7285. The board of supervisors of any county may levy a transactions and use tax for general purposes at a rate of 0.25 percent or a multiple thereof, if the ordinance ~~or resolution~~ proposing that tax is approved by a two-thirds vote of all members of the board of supervisors and the tax is approved by a majority vote of the qualified voters of the county voting in an election on the issue. The board of supervisors may levy more than one transaction and use tax under this section, if the adoption of each tax is in the manner prescribed in this section. The transactions and use tax shall conform to Part 1.6 (commencing with Section 7251).

Section 7285.5 of the Revenue and Taxation Code is amended to read:

7285.5. As an alternative to the procedure set forth in Section 7285, the board of supervisors of any county may levy a transactions and use tax for specific purposes. ~~establish an authority for specific purposes. An authority so established may impose a transactions and use tax~~ Such a tax may be levied at a rate of 0.25 ~~or 0.5~~ percent or a multiple thereof for the purpose for which it is established, if all of the following requirements are met:

(a) The ordinance proposing that tax is approved by a two-thirds vote of ~~the authority~~ all members of the board of supervisors and is subsequently approved by a two-thirds vote of the qualified voters of the county voting in an election on the issue ~~in the amount that is otherwise required by law.~~

(b) The transactions and use tax conforms to Part 1.6 (commencing with Section 7251).

(c) The ordinance includes an expenditure plan describing the specific projects for which the revenues from the tax may be expended.